

1 BEFORE THE COMMISSIONER OF POLITICAL PRACTICES
2 STATE OF MONTANA

3
4 IN THE MATTER OF THE CIVIL
5 PENALTY IMPOSED AGAINST
6 THE MONTANA HISTORICAL
7 SOCIETY

8
9 FINDINGS OF FACT, CONCLUSIONS OF LAW,
10 ORDER, AND MEMORANDUM OPINION

11 These informal contested case proceedings were filed before the Commissioner
12 of Political Practices (Commissioner) to consider the appeal of the principal
13 referenced above. Pursuant to the provisions of Montana Code Annotated § 5-7-
14 306, the principal appealed the Commissioner's assessment of a civil penalty
15 resulting from its late filing of a lobbying disclosure report. The principal filed a
16 written Waiver of Hearing waiving its right to an in-person hearing, and submitted a
17 written statement for the Commissioner's consideration.

18 Based on the written submissions of the principal, the documents of record in the
19 Commissioner's file, and the applicable law, the Commissioner makes the following
20 findings of fact, conclusions of law, and order.

21 **FINDINGS OF FACT**

- 22 1. The Montana Historical Society is a principal registered with the Commissioner.
- 23 2. The 2003 Montana Legislature passed House Bill 38 and the governor signed
24 it into law. The law took effect on February 18, 2003, and is now codified at § 5-7-
25 306, MCA. It establishes civil penalties that are required to be assessed against any
26 person who fails to file lobbying disclosure reports within the time required by law.
- 27 3. The initial 2007 lobbying disclosure report for the Montana Historical Society
was required to be filed no later than February 15, 2007.

1 4. On January 29, 2007 the office of the Commissioner sent an email to all
2 principals, including the Montana Historical Society. The email advised principals
3 that a lobbying financial disclosure report covering the month of January, 2007 was
4 required to be filed by February 15, 2007. The email referenced the appropriate
5 form that was required to be filed, known as a form L-5A, and noted that it was
6 available for download on the Commissioner's website. Citing the provisions of
7 § 5-7-208(4), MCA, the email stated: "A report must be filed in this office even
8 though neither lobbying nor incurring of lobbying expenses may have occurred."

9 5. The Montana Historical Society failed to file its L-5A on or before February 15, 2007.

10 6. On February 20, 2007, the Commissioner sent a letter to Richard Sims stating
11 that the January L-5A report was due February 15, 2007, but had not been received.
12 The letter stated that a civil penalty started being assessed on February 16, 2007, at
13 \$50 per day, and would continue until the report was filed or until the penalty
14 amount reached \$2,500. The letter urged the principal to fax the delinquent report
15 immediately, followed by a hard copy.

16 7. On February 21, 2007, Montana Historical Society administrative officer
17 Gena Ashmore met with the Commissioner's staff to attempt to clarify the filing
18 requirements. At that time the filing threshold was explained again. The
19 Commissioner's staff urged Ashmore to file a report as soon as possible to avoid
20 further fines. Staff also offered to seek informal legal advice to confirm reporting
21 was required for principals who believe they registered lobbyists in error.

22 8. On March 1, 2007, the principal filed its report. Because the report was filed
23 9 business days late, a \$450 civil penalty was assessed.

24 8. The Montana Historical Society requested a hearing to contest the civil
25 penalty. The Commissioner issued a Notice of Agency Action and Opportunity for
26 Hearing on May 2, 2007. The Montana Historical Society filed a written Waiver of
27 Hearing and submitted a written statement for the Commissioner's consideration.

1 9. Principal authority Richard Sims, writing on behalf of Montana Historical
2 Society, asked that the penalty be waived because of confusion over the
3 requirements. He correctly asserts that the Commissioner's staff discussed the
4 requirements with his staff, and that despite this communication, there were errors
5 caused by confusion.

6 10. Richard Sims also requested a refund of lobbyist licensing fees, asserting that
7 the Montana Historical Society registered in error.

8 CONCLUSIONS OF LAW

9 1. The Commissioner has jurisdiction over this matter pursuant to §§ 2-4-604
10 and 5-7-306, MCA.

11 2. Notice of the hearing was provided as required by law. § 2-4-601, MCA.

12 3. § 5-7-306, MCA, provides:

13 **Civil penalties for delays in filing -- option for hearing --**
14 **suspension of penalty.** (1) In addition to any other penalties or
15 remedies established by this chapter, a person who fails to file a report
16 within the time required by this chapter is subject to a civil penalty of
\$50 for each working day that the report is late until the report is filed
or until the penalties reach a maximum of \$2,500 for each late report.

17 The person against whom a penalty is assessed may request an informal contested
18 case hearing before the Commissioner. At the hearing, the Commissioner is
19 required to consider any factors or circumstances in mitigation, and may reduce or
20 waive the civil penalty. § 5-7-306(3), MCA.

21 4. § 5-7-208(2)(a), MCA, requires a lobbying disclosure report to be filed with
22 the Commissioner "by February 15th of any year the legislature is in session . . ."
23 The report "must include all payments made in that calendar year prior to February
24 1." § 5-7-208(4), MCA, states that if no payments are made during the reporting
25 period, "the principal shall file a report stating that fact."
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5. §§ 5-7-208(2)(a) and 5-7-208(4), MCA, read together, required the Montana Historical Society to file a report for January, 2007, even if no lobbying payments were made during the reporting period.

MEMORANDUM OPINION

The filing deadlines for lobbying disclosure reports are established by statute, and cannot be extended. While we acknowledge that filing can be confusing, the staff is readily available to answer questions and assist those who request help.

When reports haven't been filed, reminders are sent – both before and after the filing deadlines. Any confusion arguably could have been clarified when Society staff met with the Commissioner's staff on February 21, 2007. The Society was urged to file the necessary report as soon as possible to avoid additional fines, but no report was filed until March 1, 2007, over a week later.

While I'm reluctant to assess a fine against a small agency (knowing the difficulty of managing a small budget and large responsibilities), the law and sound practice require that these decisions be handled fairly and consistently, whether the assessment of a fine is against a large corporation, a small association, or (as in this case) a public agency. A claim of confusion, standing alone, generally has no bearing on the requirement for timely filing of a lobbying report, and is not a sufficient basis for reducing or waiving a civil penalty.

CPP apparently provided specific guidance during the 2005 legislative session. Registering in error again in 2007 remains the responsibility of the principal, and a refund of licensing fees is not allowed.

I urge principals to carefully review and understand the statutory filing requirements to ensure that they are in compliance with the law in order to avoid registering to lobby unnecessarily, and to avoid the assessment of civil penalties.

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Historical Society shall pay a civil penalty of \$450 to this office no later than August 31, 2007. No refund of lobbyist registration fees is being allowed.

Dr. Hansen

NOTICE: This is a final decision in a contested case. You have the right to seek judicial review of this decision pursuant to the provisions of Mont. Code Ann. §§ 2-4-701 through 2-4-711.

I hereby certify that I caused a true and accurate copy of the foregoing FINDINGS OF FACT, CONCLUSIONS OF LAW, ORDER, AND MEMORANDUM OPINION to be mailed to:

Kym Trujillo
Data Supervisor